

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DURL WORKMAN)	
Claimant)	
VS.)	
)	Docket No. 184,290
CITY OF CLYDE and)	
UNITED INDUSTRIAL)	
Respondents)	
AND)	
)	
EMPLOYERS MUTUAL)	
Insurance Carrier)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant appealed the Award dated January 7, 1998, entered by Administrative Law Judge Bruce E. Moore. The Appeals Board heard oral argument on July 1, 1998.

APPEARANCES

James B. Zongker of Wichita, Kansas, appeared for the claimant. Ronald J. Laskowski of Topeka, Kansas, appeared for respondent City of Clyde and its insurance carrier. Jerry L. Harrison of Beloit, Kansas, appeared for David Hughes, the sole proprietor of United Industrial. David G. Shriver of McPherson, Kansas, appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. In addition, the Appeals Board considered the preliminary hearing transcript dated February 9, 1994, and the deposition of Bruce W. Barefield taken on August 22, 1997.

ISSUES

Judge Moore denied claimant's request for workers compensation benefits after finding that claimant was not a statutory employee under K.S.A. 44-503 as interpreted by Bright v. Cargill, Inc.¹ Claimant requested the Appeals Board to review that finding. That is the only issue before the Board on this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds:

The Award denying benefits should be affirmed as the Appeals Board agrees with Judge Moore's analysis and conclusions.

K.S.A. 44-503(a) extends the application of the Workers Compensation Act to certain individuals and entities who are not the immediate employers of an injured worker.² The purpose of that statute is to prevent employers from evading liability under the Workers Compensation Act by contracting with others to do the work that they have undertaken as a part of their trade or business.³ The statute provides:

Where any person (in this section referred to as principal) undertakes to execute any work which is a part of the principal's trade or business or which the principal has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under the workers compensation act which the principal would have been liable to pay if that worker had been immediately employed by the principal

The test under K.S.A. 44-503(a) is whether the work that gave rise to the injury was part of the principal's trade or business has two prongs:

- (1) Is the work being performed by the independent contractor and the injured employee necessarily inherent in and an integral part of the principal's trade or business?

¹Bright v. Cargill, Inc., 251 Kan. 387, 837 P.2d 348 (1992).

²Bright, at; Hollingsworth v. Fehrs Equip. Co., 240 Kan. 398, 729 P.2d 1214 (1986).

³Bright, at 393; Zehring v. Wickham, 232 Kan. 704, 658 P.2d 1004 (1983).

- (2) Is the work being performed by the independent contractor and the injured employee such as would ordinarily have been done by the employees of the principal?⁴

In Bright, the Court analyzes the first prong and makes the activities of similar employers the key in determining whether the work being performed at the time of the accident was either an integral part of or inherent in the principal's trade or business.⁵

As determined by Judge Moore, the record establishes that large tree removal was neither performed by the City of Clyde nor by cities of similar size. Therefore, the work that Mr. Workman was performing was not an integral part of the City's business. Because neither of the above tests have been met, Mr. Workman was not a statutory employee of the City under the provisions of K.S.A. 44-503 and his request for benefits should be denied.

Judge Moore found that the City of Clyde and its insurance carrier were entitled to receive full reimbursement from the Workers Compensation Fund pursuant to K.S.A. 44-534a(b). That statute provides:

If compensation in the form of medical benefits or temporary total disability benefits has been paid by the employer or the employer's insurance carrier either voluntarily or pursuant to an award entered under this section or pursuant to an interlocutory order entered by a benefit review officer under K.S.A. 44-5,114 and amendments thereto and, upon a full hearing on the claim, the amount of compensation to which the employee is entitled is found to be less than the amount of compensation paid or is totally disallowed, the employer and the employer's insurance carrier shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation the employee is entitled to as determined in the full hearing on the claim. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

Because the Director has reserved the authority granted him under K.S.A. 44-534a(b) to determine the issues concerning the certification of liability, the Appeals Board

⁴Bright, at 393; Hanna v. CRA, Inc., 196 Kan. 156, 409 P.2d 786 (1966).

⁵Bright, at 399.

strikes the finding in the Award that "the city of Clyde, Kansas and Employers Mutual, its insurance carrier, are entitled to be fully reimbursed from the Workers' Compensation Fund pursuant to the provisions of K.S.A. 44-534a(b)." The finding is modified to the effect that the parties may request the appropriate certification from the Director.

The Appeals Board adopts Judge Moore's findings of fact and conclusions of law as set forth in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated January 7, 1998, entered by Administrative Law Judge Bruce E. Moore should be, and hereby is, affirmed as provided above.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Ronald J. Laskowski, Topeka, KS
Jerry L. Harrison, Beloit, KS
David G. Shriver, McPherson, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director